Filed 12/14/12 In re Carlos A. CA4/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| In re CARLOS A., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>CARLOS A.,<br>Defendant and Appellant. | G046161<br>(Super. Ct. No. DL040619)<br>O P I N I O N |

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The district attorney filed the first petition alleging Carlos A. (the minor) dissuaded a witness by force and threat in violation of Penal Code section 136.1, subdivision (c)(1) and that he should be declared a ward of the juvenile court on July 11, 2011. The second petition against the minor, alleging possession of a controlled substance and paraphernalia in violation of Health and Safety Code section, 11364, was filed on August 4, 2011. The third petition, alleging the same crime as in the second petition, but on a different date, was also filed on August 4, 2011. The fourth petition, alleging second degree robbery in violation of Penal Code sections 211, 212.5 subdivision (c), was filed on October 11, 2011.

The minor admitted the allegations in the first three petitions on October 19, 2011. The handwritten facts offered as a basis for the admissions state: "On or about 5/22/11, in Orange County, I knowingly, maliciously & unlawfully prevented & dissuaded Jane Doe, a witness, from making a report to a peace officer by an implied threat of force & violence upon Jane Doe. And on 9/25/10 & 5/21/11, in Orange County, I possessed paraphernalia used for unlawfully smoking a controlled substance."

The juvenile court found the allegations of the fourth petition true beyond a reasonable doubt on November 9, 2011. The court declared the minor a ward of the Orange County Juvenile Court under section 602 of the Welfare and Institutions Code, placed him on probation and ordered him to serve 210 days in juvenile hall or another appropriate facility.

In his appeal, the minor argues the court should reverse his wardship order because the evidence was insufficient to support a finding he knew or shared the perpetrator's intent to commit robbery as an aider and abetter. He also argues the juvenile court erred when it denied his counsel's requests for a continuance. We affirm.

I

FACTS

Fourteen-year-old David testified he was walking home from school on October 6, 2011 in Anaheim listening to his iPod when "they" approached him. He described what happened: "First, the guy — the main guy, he told me to wait because he . . . wanted to ask me something." The main guy had a shaved head and a stud in his lower lip, and asked David what he had in his pocket. David said he had his phone and his iPod in his pocket. By that point "all three of the guys were around me, and the guy who asked the question, as I flipped my phone open, they all like — he turned to the other two guys and they all laughed or something." The "main guy" took the phone out of David's hand, and asked to see his iPod and took it out of David's pocket.

It was at that time, the "main guy" started being violent and aggressive. He had a knife in his hand and brought it close to David's upper body. When describing where the "main guy" held the knife vis-à-vis David's upper body, David pointed to his shoulder and neck area. David let go of the earphones that were in his hand. David described what happened next: "That's when the three guys like getting ready to go. And that's when he started walking backwards."

The prosecutor attempted to clarify regarding the use of the knife, and the following question and answer transpired: Q: "The other two people, were they still there when the knife was held up to your neck?" A: "They were walking away. They weren't in one place."

As the three left, David asked: "Why did you take my stuff?" The "main guy" responded: "Leave before you get hurt." David ran away and then looked back and saw the three were running the other way "towards the neighborhood."

Later that day, at about 5:00 p.m. police officers took David on a street by an apartment complex for an identification. David identified the "main guy" and the minor, but said a third person with them was not one of the three at the scene of the

robbery. In juvenile court, David also identified the "main guy" and the minor. The Attorney General counters that substantial evidence supports the juvenile court's finding.

In addressing challenges to the sufficiency of evidence, "the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] '"If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]"' [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

'"All persons concerned in the commission of a crime, . . . whether they directly commit the act constituting the offense, or aid and abet in its commission, . . . are principals in any crime so committed.' [Citation.] Accordingly, an aider and abettor 'shares the guilt of the actual perpetrator.' [Citation.] The mental state necessary for conviction as an aider and abettor, however, is different from the mental state necessary for conviction as the actual perpetrator. [¶] The actual perpetrator must have whatever mental state is required for each crime charged . . . . An aider and abettor, on the other hand, must 'act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.' [Citation.] The jury must find 'the intent to encourage and bring about

conduct that is criminal, not the specific intent that is an element of the target offense . . . .' [Citations.]" (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1122.) Whether a defendant aids and abets a crime is a question of fact, "'and on appeal all conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment.' [Citation.]" (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

Here, not only was the minor present during the robbery, he was one of the ones who surrounded David as he was being robbed. The minor joined the other two perpetrators in laughing when the victim opened his cell phone, indicating he was jointly involved with what was going on. As soon as David relinquished the last item, the earphones, the minor was "like getting ready to go." When the "main guy" backed away, the three of them ran away together. We conclude the evidence in this record supports the juvenile court's finding the minor acted with the knowledge of the robbery and with the intent to facilitate it.

*Continuance*

The minor contends the juvenile court improperly denied his counsel's repeated requests for a continuance because counsel was not adequately prepared, and thereby deprived him of his constitutional right to effective assistance of counsel and a fair trial. The Attorney General responds the court's denial of a continuance "was proper because counsel had sufficient time to prepare, the investigation she claimed she still needed to do would not have provided exculpatory evidence, and all parties, including the prosecutor and counsel for the two codefendants had announced ready for trial."

The record reflects that on the same day the minor admitted the truth of the first three petitions, October 19, 2011, his counsel told the court: "We're not prepared to enter a time waiver at this time. We currently have a court trial date set for October 25th." On October 25, the court stated: "On petition number 4, we will leave the trial

date of October 31st and we will set an interim pretrial for department 42, which will be tomorrow, October 26th. . . . in department 42."

And the next day, October 26, when the case was called, minor's counsel told the court: ". . . on behalf of Carlos who's present before the court in custody. . . . We would like the court trial date for October 31st to remain."

On the trial date, October 31, minor's counsel filed a motion requesting a continuance of the trial. The next day, November 1, counsel filed a revised motion to continue the trial. On November 2, after trial had commenced, minor's counsel again requested a continuance.

While denying the motions to continue, the juvenile court made several accommodations to permit the minor's counsel to prepare. The first one was that the trial was trailed from October 31 until the next day, November 1.

On November 1, when court and counsel discussed a police report the petitioner was late in providing, a reason minor's counsel gave for the continuance request, the juvenile court stated: "[T]he court again denies the motion to continue the matter. I have imposed one penalty for a discovery violation. Let me be very clear, Penal Code [section] 1054 does not apply to juvenile proceedings; however, every juvenile court within the state is required to impose or regulate discovery provisions to meet basic due process for all minors. [¶] I have made the ruling before and will continue that I find the guidelines of Penal Code [section] 1054 are appropriate in order to ensure due process for minors, and therefore, I do apply them in my courtroom. [¶] In this case I find that an appropriate sanction on petitioner's office for not having provided you with a copy of the co-minors . . . report of his conversation or statement to police is that no admission of such — or no evidence of such statement shall be admitted as to your client at least one week from the time you received the report, which would fall at the end of Thursday. So as of Friday, we would be able to receive such evidence as to your client but not before that time."

Another reason minor's counsel gave for the continuance request involved photographs of the knife as compared to the victim's memory about the knife. The juvenile court, while expressing doubt about the necessity of recalling the victim because "he has already admitted he barely saw it," did order the victim to be recalled for further cross-examination by minor's counsel. Minor's counsel presented his defense from November 7 until November 9.

"A continuance in a criminal case may be granted only for good cause. [Citation.] Whether good cause exists is a question for the trial court's discretion. [Citation.]" (*People v. Doolin* (2009) 45 Cal.4th 390, 450.)

Counsel was presumably ready for trial as of October 26, but thereafter found reasons why more time was needed to prepare. Several accommodations were granted: the court trailed trial for a day, restricted the prosecution's use of evidence until the defense had time to study it and permitted the defense to recall a witness. Additionally, even after trial commenced, counsel had a full week to continue to prepare before starting the minor's presentation of evidence. Further, the minor has cited to nothing to indicate he was prejudiced by being ordered to go to trial when he was. Under the state Constitution we may not reverse a judgment for evidentiary error absent a "miscarriage of justice." (Cal. Const., art. VI, § 13.) To find a miscarriage of justice, we must be persuaded it is "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Under the circumstances we find in this record, we conclude the juvenile court did not abuse its discretion when it denied the requests for continuance. Accordingly, we find he had a fair trial and that there was no denial of due process.

## III

## DISPOSTION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.